

**IN THE HIGH COURT OF BOMBAY AT GOA****WRIT PETITION NO. 582/2013**

Adv. Aires Rodrigues,  
major, Indian National,  
w/Office at C/G-2, Shopping Complex,  
Ribandar Retreat,  
Ribandar, Goa 403006.

..... Petitioner.

V/s.

1. State of Goa, by its Chief Secretary,  
Secretariat, Porvorim, Goa.

2. Mrs. Leena Mehendale,  
major, State Information Commission,  
Ground Floor,  
Shrama Shakti Bhavan,  
Panaji, 403001, Goa.

3. Director of Information,  
Udyog Bhavan,  
3<sup>rd</sup> Floor, Panaji, Goa.

..... Respondents.

Mr. Aires Rodrigues, party in person.

Mr. A. N. S. Nadkarni, Advocate General with Mr. D. Lawande,  
Government Advocate for respondents No.1 and 3.

**CORAM :- NARESH H. PATIL &  
F.M. REIS, JJ.**

**Reserved on : 15<sup>th</sup> October, 2013.**

**Pronounced on : 21<sup>st</sup> October, 2013.**

**O R D E R :- (PER NARESH H. PATIL, J.)**

The petitioner, who is a practising Advocate, has filed this writ petition for a writ of quo warranto, against respondent No.2 Mrs. Leena Mehendale who has been appointed as the State Chief Information Commissioner, Goa. The petitioner further prays for a writ of mandamus or direction, in exercise of jurisdiction of this Court conferred under Article 226 of the Constitution of India, to forthwith revoke/withdraw the appointment of respondent No.2 Mrs. Leena Mehendale as the State Chief Information Commissioner.

2. The petitioner contends that an advertisement was published in The Navhind Times on 4<sup>th</sup> May, 2013 by the State of Goa, calling for applications to the post of the State Chief Information Commissioner and State Information Commissioner (SIC). Many persons applied to the said two advertised posts. A committee appointed by the Government, headed by the Chief Secretary, shortlisted names of seven persons for the posts of the State Chief Information Commission and the SIC. The Government then selected Mrs. Leena Mehendale, respondent No.2 herein for the post of State Chief Election Commission. Mr. Stanley Coutinho was selected for one

post of SIC and Mr. Sandesh Prabhudessai was also selected by the Government for another post of SIC.

3. The petitioner stated that by Writ Petition No. 484/2013, he challenged selection of Shri Sandesh Prabhudessai to the post of SIC on various grounds. On the date of hearing of the writ petition i.e. on 3<sup>rd</sup> September, 2013, the learned Advocate General of the State made a statement before this Court that the Government had cancelled the selection of both the State Information Commissioners. However, it was informed that the Government has appointed Mrs. Leena Mehendale, respondent No.2 herein as the State Chief Information Commissioner. In view of the statement made by the learned Advocate General, the said writ petition was disposed of by this Court vide order dated 3<sup>rd</sup> September, 2013.

4. The petitioner states that the entire selection process, including that of the State Chief Information Commissioner, was contrary to the law. The petitioner, thereafter, applied for getting information under the Right to Information Act for challenging appointment of respondent No.2 Mrs. Leena Mehendale as the State Chief Information Commissioner.

5. The petitioner contends that the Government has violated the directions issued by the Supreme Court in the cases of *Namit Sharma vs. Union of India*, (2013) 1 SCC 745 and *Union of India vs. Namit Sharma*, 2013 (11) SCALE 85.

6. It is contended by the petitioner that the State Chief Information Commissioner has necessarily to discharge quasi-judicial functions and person holding the said post requires judicial approach, legal experience and knowledge and experience of law. The petitioner states that in view of the directions given by the Supreme Court in the case of *Namit Sharma*, it was incumbent on the part of the State Government to appoint a person having eminence in public life, having knowledge and experience in the fields, as set out in Sections 12(5) and 15(5) of the Right to Information Act, 2005 (for short “the Act of 2005”).

7. In respect of the candidature of respondent No. 2 Mrs. Leena Mehendale, the petitioner contended that she obtained Law Degree in the year 2010. Respondent No.2 does not possess the required vast knowledge and experience of law. Respondent No.2 did

not submit her application through proper Channel i.e. through the Central Administrative Tribunal of which she was a Member at the relevant time. It is alleged by the petitioner that respondent No.2 is not a person of eminence in public life. Respondent No.2 does not have knowledge of local language of the State of Goa, more particularly *Konkani*. It is submitted that as respondent No.2 was a sitting Member of the Central Administrative Tribunal, she could not have applied for the post of State Chief Information Commissioner, Goa. The petitioner's view is that although there were other competent candidates who were persons having eminence in public life or judicial or legal knowledge and experience, yet a person who had no eminence in public life or legal knowledge or expertise, has been sought to be appointed as the State Chief Information Commissioner

8. On 17<sup>th</sup> September, 2013, this Court heard the petitioner and issued notices to respondents No.1 and 3, returnable on 30<sup>th</sup> September, 2013. Notices were waived by the Counsel appearing on behalf of respondents No.1 and 3.

9. An affidavit-in-reply came to be filed, sworn on 30<sup>th</sup> September, 2013 by Mr. Swapnil Naik, the Director of Respondent

No.3. The deponent-respondent No.3 submitted that this petition has been filed as a writ petition and not as Public Interest Litigation. It is a trite law that a writ petition seeking a writ of *quo warranto* can only be entertained at the behest of a person who is aggrieved by the appointment of another, which is contrary to law. The only exception to the said rule is that a public interest litigation seeking a writ of *quo warranto* is maintainable at the instance of a public spirited person who may be aggrieved by the appointment so challenged, but not qualified to be appointed to the said post. It was prayed that the instant writ petition at the instance of the petitioner is not maintainable and be dismissed on this ground alone. The petition has been filed to seek undue publicity and the present petition is nothing, but a publicity litigation, and a sheer abuse of the process of this Court.

10. It is contended that the present petition has been filed by the petitioner in his personal capacity who is known for repeatedly filing petitions before this Court in order to seek publicity and in the bargain to embarrass several eminent personnel who are occupying important positions in the State Government. The deponent prays for dismissal of the petition with exemplary costs. The deponent refers to Writ Petition No. 93/2002, filed by the petitioner challenging the

appointment of the Chairman and a Member of the Goa Public Service Commission, which petition came to be dismissed vide judgment dated 4<sup>th</sup> September, 2002, wherein this Court, *inter alia*, observed “.... Be that as it may, the Petitioner has assured us that he would, in future, not be privy to passing information to the press, regarding the contents of a Petition yet to be registered. We accept the explanation of the Petitioner and do not propose to dilate on this issue, any further...”.

11. The deponent has given reference of all other petitions filed by the petitioner and the news items appeared in various newspapers and on his Face Book page in respect of the petitions filed by the petitioner. Further observations made by this Court in the proceedings of Writ Petition No. 257/2013 filed by the petitioner are also quoted by the deponent. A reference is made to the proceedings of Writ Petition No. 257/2013 filed by the petitioner, wherein the appointment of 'Lokayukta' was challenged. The said writ petition came to be dismissed by an order passed by this Court on 25<sup>th</sup> June, 2013.

12. The deponent has referred to several other instances of filing court proceedings by the petitioner, which we need not discuss

any further.

13. Turning to the merits of the contentions raised in the instant petition, the deponent has refuted all the allegations made by the petitioner in respect of the qualification of Mrs. Leena Mehendale, respondent No.2 herein who has been appointed as the State Chief Information Commissioner. In respect of the contention of the petitioner that candidature of respondent No.2 was rejected by the Government of Maharashtra for similar post of Chief Information Commissioner, the deponent has put the petitioner to strict proof thereof.

14. In respect of respondent No.2 not possessing knowledge of local language, it is submitted by the deponent that the Official Language Act, 1963 or the Goa Daman and Diu Official Language Act, 1987, does not provide that all persons appointed to posts in Goa should have knowledge of Konkani language. Respondent No.2 is well conversant with Marathi. In respect of the allegation that the appointment was made for some oblique purpose, it was contended that the petitioner has miserably failed to substantiate the said contention.



15. In respect of qualification of respondent No.2 to hold the said post, the deponent contends that respondent No.2 has previously held many eminent posts during her career and the last such post held by her, as an IAS Officer, was the Additional Chief Secretary (GAD), Government of Maharashtra. Respondent no.2 has completed her M.Sc. in Physics, M.Sc. in Project Planning, MBA, besides LL.B.. The entire file, comprising of all the material, which included the bio-data of respondent No.2, was placed by the respondents before the Hon'ble Governor while recommending the name of respondent No.2 for the post of State Chief Information Commissioner.

16. It is contended that a chart was duly prepared by respondent No.3 and the same was placed before the Committee and was also part of the proposal forwarded by the Committee to the Hon'ble Governor. Judgment in the case of *Namit Sharma* (supra) (Review Petition) was delivered by the Apex Court on 3<sup>rd</sup> September, 2013. The Committee met and forwarded the proposal to the Hon'ble Governor, much prior to the said date. The petitioner has, thereafter, filed the instant petition on 5th September, 2013 with oblique motives, male fide intentions, unnecessary enthusiasm and without

proper verification of facts and clearly without having any foundation in law.

17. The deponent contends that respondent No.2 has wide experience and knowledge and is a person of eminence in public life, having held several eminent posts. It is denied that the selection and appointment of respondent No.2 is contrary to the directions of the Apex Court and in no way illegal and/or void. It was further submitted that the petitioner has merely alleged breach of all norms, rules and directions, yet for the reasons best known to him, he has not demonstrated as to which norms, rules and directions have been violated while proposing the name of respondent No.2.

18. An affidavit-in-rejoinder has been filed by the petitioner on 3<sup>rd</sup> October, 2013, denying the allegations made against the petitioner.

19. An additional affidavit-in-rejoinder has been filed on behalf of respondents No.1 and 3 on 5<sup>th</sup> October, 2013.

20. An additional affidavit was filed by the petitioner on 11<sup>th</sup> October, 2013 bringing on record a copy of the report by the Law

Department on the issue of appointment of Information Commissioners; a copy of minutes of meeting of the Pre-selection Committee held on 4<sup>th</sup> July, 2013; a copy of the minutes of the meeting of the Selection Committee held on 29<sup>th</sup> July, 2013; a copy of note dated 23<sup>rd</sup> August, 2013 sent to the Hon'ble Governor of Goa and a copy of cabinet decision on 14<sup>th</sup> August, 2013.

21. We have heard the petitioner-party in person and the learned Advocate General for respondents No.1 and 3, at length.

22. The party in person Mr. Aires Rodrigues, during the course of his arguments, submitted that the scrutiny committee has not verified the contents of the bio-data of respondent No.2 who submitted merely an application, without supporting annexures in respect of the contents of the bio-data. The State did not call for a vigilance report before forwarding the name of respondent No.2 to the Hon'ble Governor. Respondent No.2 did not apply against the advertisement, through proper channel. The High Powered Committee failed to apply its mind in reaching the decision of recommending the name of respondent No.2. The minutes of the meeting of the High Powered Committee in respect of selection of the State Chief

Information Commissioner and the SICs held on 29<sup>th</sup> July, 2013 do not show that the Committee considered the criteria like eminence in public life, with wide knowledge and experience in all the fields, as set out in Section 15(5) of the Act of 2005. The shortlisting committee has not performed its job properly. In respect of appointments of SICs, in the proceedings of Writ Petition No. 484/2013, the learned Advocate General of the State had made a statement before this Court that State had cancelled the selection of the SICs. It being the same advertisement under which the State had initiated the process to select the State Chief Information Commissioner and the SICs, it was necessary for the State to have cancelled the entire process and reinitiated the process of appointment afresh. The party in person, therefore, submitted that there are reasons to attribute motives to the State Authorities and the State Government in taking hasty decision in recommending the name of respondent No.2 as the State Chief Information Commissioner. The party in person referred to the notings of the Law Department and the annexures placed on record in support of his submissions. In the view of Mr. Rodrigues, considering the vital importance of the post of the State Chief Information Commissioner, a person of eminence in public life, having wide knowledge in various branches as mentioned in Section 15(5) of the

Act of 2005 ought to have been selected. Respondent No.2 does not satisfy the essential criteria of person having eminence in public life

The party in person has place reliance upon the following judgments :

(1) *Midhuna Nathan and etc. etc. vs. State of Tamil Nadu and others*, AIR 1996 MADRAS 178,

(2) *Union of India vs. R. Gandhi, President, Madras Bar Association*; (2010) 11 SCC 1, para 109 which reads thus :

“ 109. A lifetime of experience in administration may make a member of the civil services a good and able administrator, but not a necessarily good, able and impartial adjudicator with a judicial temperament capable of rendering decisions which have to: (i) inform the parties about the reasons for the decision; (ii) demonstrate fairness and correctness of the decision and absence of arbitrariness; and (iii) ensure that justice is not only done, but also seem to be done.”

(3) *K. Padmanabhaiah vs. Government of Andhra Pradesh General Administration Department and others*, P.I.L. Nos. 28 and 38 of 2013 (A.P. High Court);

(4) *Namit Sharma vs. Union of India*, (2013) 1 SCC 745; and

(5) *Union of India vs. Namit Sharma*, 2013 (11) SCALE 85.

23. Mr. A.N.S. Nadkarni, learned Advocate General appearing on behalf of respondents No.1 and 2 has highlighted the petitioner's role in filing various petitions challenging appointments made by the State Government of eminent persons to various posts including the Chairman and Members of the Goa Public Service Commission, Lokayukta of the State of Goa. It was submitted that the party in person is in habit of filing such petitions and making allegations and thereafter approaching the press, seeking publicity. Reference was made to various orders passed by this Court which are quoted in the affidavit-in-reply filed by respondent No.3. During the course of hearing, the respondents filed Misc. Civil Application No.852 of 2013 on 30<sup>th</sup> September, 2013 praying for a direction to appoint an amicus curiae in the matter to assist the Court and to discharge the petitioner from the present proceedings. A news item appeared in the local daily "Tarun Bharat" which is contrary to the orders passed by this Court in the present proceedings, was brought to the notice of this Court. After considering the matter, notice of contempt of Court was issued by this Court against the Editor, Printer, Publisher and Chief Reporter of the said daily, returnable on 24<sup>th</sup>

October, 2013. Issue in respect of appointment of amicus curiae was kept open by the order dated 7<sup>th</sup> October, 2013, passed by this Court.

24. On merits, the learned Advocate General submitted that the process for appointment of the State Chief Information Commissioner and the SIC was initiated strictly in accordance with law and the judgment of the Apex Court in the case of *Namit Sharma* (supra). The judgment in *Union of India vs. Namit Sharma* (Review Petition) was delivered on 3<sup>rd</sup> September, 2013, much after the name of respondent No.2 was approved and recommended to the Hon'ble Governor for appointment as the State Chief Information Commissioner. On finding that one post of the State Chief Information Commissioner and one post of SIC was advertised and two persons got selected for the SIC, the State took an appropriate decision and made a statement before this Court in the proceedings in Writ Petition No. 484/2013 on 3<sup>rd</sup> September, 2013 that the State had cancelled the selection and appointment of two persons as SICs. The learned Advocate General further submitted that there has been no breach of procedure in scrutinizing the candidates and finally recommending the name of respondent No.2 to the post of the State Chief Information Commissioner. Respondent No.2, according to the

learned Advocate General, has unblemished record, considering the qualification acquired by her and the post earlier held by her in the State of Maharashtra, it could reasonably be ascertained that respondent No.2 Mrs. Leena Mehendalre is a person of eminence in public life. At the time when respondent No.2 applied for the post, she was a sitting Member of the Central Administrative Tribunal. Considering the wide experience possessed by respondent No.2 in the field of administration and various posts held by her, the scrutiny committee short-listed the name of all such candidates by following the proper procedure and placed such names before the High Powered Committee which consisted of Hon'ble the Chief Minister of the State, the Deputy Chief Minister and the Leader of Opposition.

25. The original record was placed before this Court twice. The learned Advocate General while referring to the original record brought to our notice the relevant notings in the file, the procedure adopted by the short-listing committee and the minutes of the meeting of the High Powered Committee, constituted under Section 15(3) of the Act of 2005. Reliance was placed on the cabinet note, having annexures A, B, and C, which included Law Ministry's note, relevant extract of the Apex Court Judgment and the bio-data of respondent



No.2. It was submitted that the entire file was forwarded to the Hon'ble Governor and His Excellency the Governor of Goa approved the appointment of respondent No.2 on 2<sup>nd</sup> September, 2013. In the meanwhile, respondent No.2 resigned from her post as the Member of Central Administrative Tribunal which was accepted by the Hon'ble the President of India with effect from 5<sup>th</sup> October, 2013. The respondent No.2 relinquished the office with effect from 5<sup>th</sup> October, 2013.

The learned Advocate General referred to various provisions of the Constitution of India, Rules of Business of the Government of Goa, General Clauses Act, 1897 and the relevant provisions of the Act of 2005.

The learned Advocate General referred to the Judgment of *Namit Sharma* (supra) (Review Petition) and submitted that the Apex Court in the Review Petition has directed in clauses (iii), (iv) and (v) as under :

- “(iii) We direct that only persons of eminence in public life with wide knowledge and experience in the fields mentioned in Sections 12(5) and 15(5) of the Act be considered for appointment as Information Commissioner and Chief Information Commissioner.
- (iv) We further direct that persons of eminence in

public life with wide knowledge and experience in all the fields mentioned in Sections 12(5) and 15(5) of the Act, namely, law, science and technology, social service, management, journalism, mass media or administration and governance, be considered by the Committees under Sections 12(3) and 15(3) of the Act for appointment as Chief Information Commissioner or Information Commissioners.

(v) We further direct that the Committees under Sections 12(3) and 15(3) of the Act while making recommendations to the President or to the Governor, as the case may be, for appointment of Chief Information Commissioner and Information Commissioners must mention against the name of each candidate recommended, the facts to indicate his eminence in public life, his knowledge in the particular field and his experience in the particular field and these facts must be accessible to the citizens as part of their right to information under the Act after the appointment is made.”

The learned Advocate General submitted that so far the Governor has not administered oath to the State Chief Information Commissioner.

The learned Advocate General relied upon the following judgments :

(1) *Hari Bansh Lal vs. Sahodar Prasad Mahto and others*, (2010) 9

SCC 655;

(2) *Centre for PIL and another vs. Union of India and another*,

(2011) 4 SCC 1. In paras 61 and 62, the Apex Court has observed as under :

“ **61.** In *Hari Bansh Lal v. Sahodar Prasad Mahto*, (2010) 9 SCC 655, the appointment of Shri Hari Bansh Lal as Chairman, Jharkhand State Electricity Board stood challenged on the ground that the Board had been constituted in an arbitrary manner; that Shri Hari Bansh Lal was a person of doubtful integrity; that he was appointed as a Chairman without following the rules and procedure and in the circumstances the appointment stood challenged. On the question of maintainability, the Division Bench of this Court held that a writ of quo warranto lies only when the appointment is contrary to a statutory provision.

**62.** It was further held in *Hari Bansh Lal* case that “suitability” of a candidate for appointment to a post is to be judged by the appointing authority and not by the court unless the appointment is contrary to the statutory rules/provisions. It was important to note that this Court went into the merits of the case and came to the conclusion that there was no adequate material to doubt the integrity of Shri Hari Bansh Lal who was appointed as the Chairperson of

Jharkhand State Electricity Board. This Court further observed that in the writ petition there was no averment saying that the appointment was contrary to statutory provisions.”

**(2) *Union of India vs. Namit Sharma*, 2013 (11) SCALE 85.** Clause (iii) reads thus :

“(iii) We direct that only persons of eminence in public life with wide knowledge and experience in the fields mentioned in Sections 12(5) and 15(5) of the Act be considered for appointment as Information Commissioner and Chief Information Commissioner.”

26. We have perused the original record forwarded by the State Government to the Hon’ble Governor twice, record placed before us in the proceedings of this petition, the provisions of the Act of 2005 and the judgments cited supra. In *Namit Sharma* (Review Petition), the Apex Court declared that the provisions of sections 12(5) and 15(5) of the Act of 2005 are not ultra vires the Constitution. In clause (iv), the Apex Court directed that persons of eminence in public life with wide knowledge and experience in all the fields mentioned in Sections 12(5) and 15(5) of the Act, namely law, science and technology, social service, management, journalism, mass media or

administration and governance, be considered by the Committees under Sections 12(5) and 15(5) of the Act, for appointment as Chief Information Commissioner or Information Commissioners. The judgment in the case of Namit Sharma (Review Petition) was delivered on 3<sup>rd</sup> September, 2013. The record reveals that the High Powered Committee, after going through the recommendations of the Pre-Selection Committee and the bio-data of the candidates, recommended the name of respondent No.2-Mrs. Leena Mehendale, IAS (Retired) for the post of the State Chief Information Commissioner on 29<sup>th</sup> July, 2013. We have verified the record maintained by the State Government twice. The State has followed the procedure of issuance of an advertisement, calling for applications to the post of State Chief Information Commissioner and SIC. The candidates were shortlisted by the Committee constituted for the said purpose, in accordance with law. The Committee after verifying the material placed before it, the bio-data of respondent No.2 and other candidates, recommended the name of respondent No.2 for appointment as the State Chief Information Commissioner. The High Powered Committee selected respondent No.2 as the State Chief Information Commissioner and also decided to recommend two names for the posts of SIC, considering the

fact that the posts of SIC and CIC were vacant for more than a year and the fact that there has been lot of backlog of cases. But, during the proceedings in Writ Petition No.484/2013, a statement was made on behalf of the State that as under the advertisement one post of Chief Information Commissioner and one post of SIC were advertised, the State Government was cancelling the selection of the two persons made against one post of SIC. In the facts of the case, we do not find that it was necessary for the State to have cancelled the entire selection process initiated for appointment of State Chief Information Commissioner when a statement was made only in respect of appointment of SIC. The selection process of SIC was quashed and set aside as the statement was made on a valid ground which would in no way affect the selection process undertaken to the post of State Chief Information Commissioner.

27. In respect of the qualification of respondent No.2 Mrs. Leena Mehendale, we find that respondent No.2 is a person having held various important posts in the Administration of the State of Maharashtra. When respondent No.2 applied for the post, she was a sitting Member of the Central Administrative Tribunal. Considering her experience and eminence, the High Powered Committee of the

State selected respondent No.2 and recommended her name to the post of State Chief Information Commissioner. His Excellency Hon'ble the Governor of Goa, has approved the recommendation made in respect of respondent No.2 on 3<sup>rd</sup> September, 2013. The file containing the entire record maintained by the State was forwarded to the Hon'ble Governor, which we have gone through. The petitioner could not point out any adverse remark/information in respect of functioning of respondent No.2 as an IAS Officer in various capacities in the State of Maharashtra and her functioning as a Member of the Central Administrative Tribunal.

28. Considering the provisions of the Act of 2005 and the directions issued by the Apex Court in Namit Sharma (supra), we find that the same are substantially complied with by the State Government. Although the judgment in Namit Sharma (Review Petition) was delivered on 3.9.2013, the State Government had already completed the procedure in respect of selection and appointment of respondent No.2. The judgment in Namit Sharma (Review Petition) was delivered by the Apex Court on 3<sup>rd</sup> September, 2013; whereas the High Powered Committee had recommended the

name of respondent No.2 on 29<sup>th</sup> July, 2013. Therefore, the issue as to whether the State Government has complied with the directions given by the Apex Court in the case of Namit Sharma (Review Petition) need not be gone into. In the absence of any material produced by the petitioner that respondent No.2 is not competent to hold the post, we are of the opinion that the objections raised by the petitioners to the appointment of respondent No.2 cannot be held to be sustainable.

29. Mr. Rodrigues, party in person submitted that the High Powered Committee ought to have expressed in more words regarding eminence and experience of the applicant while recommending the name of respondent No.2 Mrs. Leena Mehendale. The High Powered Committee could have expressed little more about the eminence and experience of respondent No.2, but considering the purport of the provisions of Section 15(5) of the Act of 2005 and the fact that the entire record was placed before the High Powered Committee, we do not find that the decision making process reached by the High Powered Committee gets vitiated in any way. We find, as such, that the recommendation is made in reasonably appropriate manner.



30. In view of the above, there is no merit in the petition which is hereby dismissed, with no order as to costs.

**NARESH H. PATIL, J.**

**F.M. REIS, J.**

**ssm.**